

**ATT: No**

Either:

1. **this complaint was not filed with exhibits or attachments, or**
2. **all exhibits/attachments filed with complaint are attached to this copy**

**Case Number:**

**Case File Date:**

**NOS:**

1 XAVIER BECERRA  
Attorney General of California  
2 JANE ZACK SIMON  
Supervising Deputy Attorney General  
3 LAWRENCE MERCER  
Deputy Attorney General  
4 State Bar No. 111898  
455 Golden Gate Avenue, Suite 11000  
5 San Francisco, CA 94102-7004  
Telephone: (415) 510-3488  
6 Fax: (415) 703-5480  
E-mail: Larry.mercer@doj.ca.gov  
7 *Attorneys for Petitioner and Real Party in Interest*

**FILED**  
San Francisco County Superior Court

FEB 01 2019

CLERK OF THE COURT  
BY: *[Signature]*  
Deputy Clerk

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 COUNTY OF SAN FRANCISCO

**CPF-19-516531**

11 **DEAN GRAFILO, DIRECTOR,  
12 DEPARTMENT OF CONSUMER  
13 AFFAIRS, STATE OF CALIFORNIA,**

14 **Petitioner,**

15 **v.**

16 **RON KENNEDY, M.D.,**

17 **Respondent,**

19 **KIMBERLY KIRCHMEYER,  
20 EXECUTIVE DIRECTOR, MEDICAL  
21 BOARD OF CALIFORNIA,**

22 **Real Party in Interest.**

Case No.

**PETITION FOR ORDER TO SHOW  
CAUSE AND FOR ORDER  
COMPELLING COMPLIANCE WITH  
INVESTIGATIONAL SUBPOENAS**

Date:

Time:

Dept:

Judge:

Trial Date:

Action Filed:

23 Petitioner Dean Grafilo, Director of the Department of Consumer Affairs, State of  
24 California (DCA), by his attorneys Xavier Becerra, Attorney General of the State of California,  
25 and Lawrence Mercer, Deputy Attorney General, alleges as follows:

26 1. Petitioner Dean R. Grafilo (Petitioner) is the duly appointed Director of the  
27 Department of Consumer Affairs. He brings this action solely in his official capacity as Director.  
28

1           2.     The Department of Consumer Affairs of the State of California is a department within  
2 the meaning of Government Code §§ 11180 *et seq.* Under Government Code §§ 11181 and  
3 11182, the Director of the DCA is the head of the Department and has the authority to conduct  
4 investigations, issue subpoenas, and take testimony in connection with matters within the  
5 jurisdiction of the Department. The Director also has the power to delegate such authority.

6           3.     Real Party in Interest Kimberly Kirchmeyer is the Executive Director of the Medical  
7 Board of California (Medical Board) which is a duly constituted government agency within the  
8 DCA. The Medical Board is charged with the enforcement of the Medical Practice Act (Business  
9 and Professions Code §§ 2000 *et seq.*) and with investigating complaints from consumers, from  
10 other licensees, from healthcare facilities, or from the Board itself, that a physician may be guilty  
11 of unprofessional conduct. (Business and Professions Code § 2220(a).) This proceeding directly  
12 affects the interests of the Medical Board because the petition seeks to enforce compliance with  
13 two investigational subpoenas issued during an ongoing Medical Board investigation of possible  
14 violations of the Medical Practice Act by its licensee Ron Kennedy, M.D. (Respondent)

15           4.     The Director of the DCA has delegated to officers of the Medical Board, which is an  
16 agency within the DCA, the authority to issue subpoenas under Government Code § 11182.

17           5.     Respondent Ron Kennedy, M.D. holds a Physician's and Surgeon's Certificate issued  
18 by the Medical Board, which permits him to engage in the practice of medicine.

19           6.     By way of this petition, the Medical Board requests an order compelling Dr. Kennedy  
20 to comply with investigational subpoenas for the medical records of two school-aged children for  
21 whom he provided vaccination exemptions. As set forth in the Declaration of Supervising Special  
22 Investigator Rashya Henderson, filed herewith, Dr. Kennedy was duly served with the  
23 investigational subpoenas, but has objected to production of the subpoenaed records and refused  
24 to produce them. As set forth in Ms. Henderson's declaration and the Declaration of Dean A.  
25 Blumberg, M.D., the records sought are relevant and necessary to the investigation of vaccination  
26 exemptions issued by respondent Ron Kennedy, M.D.

27           7.     On February 17, 2017, the Central Complaint Unit of the Medical Board of California  
28 received an online complaint from an Immunization Coordinator with the Sonoma Department of

1 Health Services alleging that Ron Kennedy, M.D. wrote inappropriate vaccination exemptions for  
2 school-aged children in Sonoma County schools. The complaint stated that school staff members  
3 were concerned because Dr. Kennedy is not a pediatrician; rather, he was trained as a psychiatrist  
4 and now provides medical services at an "anti-aging" clinic. An investigation was opened and  
5 witnesses were interviewed over the course of 2017. The Board learned that J.M., a school-aged  
6 boy, had been issued a medical exemption from vaccination by Dr. Kennedy, without the  
7 knowledge or consent of the boy's father, A.M. The child's father advised that the child had no  
8 medical condition that would exempt him from required vaccinations, that Dr. Kennedy was not  
9 the child's pediatrician and that the exemption had no basis in fact. A.M. provided a release for  
10 his son's records from Dr. Kennedy, as well as from the child's pediatric care provider, Kaiser  
11 Permanente.

12 8. On August 17, 2017, the Central Complaint Unit of the Medical Board of California  
13 received an online complaint from a school nurse employed by the Fremont School District. The  
14 complaint stated that she had received a vaccination exemption for I.L., a school-aged girl  
15 entering the 7<sup>th</sup> grade. The exemption was written on a "mass produced form" and issued by Dr.  
16 Kennedy, albeit Dr. Kennedy's Santa Rosa clinic was quite distant from Fremont. The nurse was  
17 interviewed and she stated that the student's school records did not reference any medical  
18 indication that would support a vaccine exemption. She stated that the child had a personal belief  
19 exemption when she entered Kindergarten in 2009 and, after the passage of SB277, when  
20 personal belief exemptions were no longer accepted by schools, her parents produced the medical  
21 exemption written by Dr. Kennedy. The Board obtained a copy of the exemption issued by  
22 Respondent, which was permanent and applied to all vaccinations. The Board's investigator  
23 requested a medical release for I.L.'s medical records from her parents, but they did not provide  
24 the requested release.

25 9. At the same time that the Board issued subpoenas for the medical records of the three  
26 children whose identities were known, subpoenas were issued to 12 school districts where  
27 exemptions had been reported for unidentified children. In response, the Board's investigator  
28 received approximately 50 vaccination exemptions written by Dr. Kennedy. With minor

1 variations, these exemptions were all written on a preprinted form and, for the most part, provided  
2 permanent exemptions to all vaccinations for each child.

3 10. The Board served investigational subpoenas for the records of J.M., S.M. and I.L. on  
4 Dr. Kennedy, but he has refused to comply with the subpoenas.

5 11. An expert in pediatrics and pediatric infectious diseases, Dean A. Blumberg, M.D.,  
6 has reviewed the information obtained by the Board's investigation. He reviewed the exemptions  
7 issued to J.M., S.M. and I.L., as well as approximately 50 other students, the pediatric medical  
8 records for J.M. and S.M. and the information provided by A.M., the father of J.M. and S.M.  
9 Based on his review, Dr. Blumberg has opined that the exemptions issued by Dr. Kennedy  
10 appeared to have been issued without an appropriate evaluation and valid medical indication for  
11 exempting the school-aged children from required exemptions. He advised that there is no  
12 component common to all required vaccines and that a medical condition that applied to all  
13 vaccines would be medically improbable. Dr. Blumberg also advised that the conditions stated as  
14 reasons for exemptions from required vaccinations were for the most part unsupported by medical  
15 science and, further, that even those conditions that might provide a temporary reason for  
16 delaying a single vaccine, none provided a valid reason for permanent exemptions from all  
17 vaccinations. The expert stated that the standard of care would require documentation of the  
18 evaluation and medical indication for the exemptions and respondent's medical records are  
19 necessary to determine whether the exemptions issued by respondent are supported by a valid  
20 medical indication.

21 12. Pursuant to Government Code § 11186 venue lies in the County of San Francisco,  
22 where the investigation was directed by the Office of the Attorney General, and pursuant to  
23 §11188 this Court has the authority to issue an Order to Show Cause why Respondent should not  
24 be ordered to comply with the investigational subpoenas for the records of J.M., S.M. and I.L.  
25 that were served upon him.

26 13. This petition is brought by Dean Grafilo in his official capacity as the Director of the  
27 Department of Consumer Affairs and is deemed verified as a matter of law. (Code Civ. Pro. §446)  
28

1           14. On January 30, 2019, at 3:25 p.m., counsel for the Respondent was given notice of  
2 the ex parte application for an Order to Show Cause.

3 Dated: February 1, 2019

Respectfully Submitted,

4 XAVIER BECERRA  
5 Attorney General of California  
6 JANE ZACK SIMON  
7 Supervising Deputy Attorney General

8 

9 LAWRENCE MERCER  
10 Deputy Attorney General  
11 *Attorneys for Petitioner and*  
12 *Real Party in Interest*

13 SF2018201909  
14 21334396.docx  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28